

**NUR G. JAAFAR, PETITIONER, VS. THE COMMISSION ON ELECTIONS,  
RADJA JUBAIDA H. MATBA, ISMAEL B. ABUBAKAR, JR., HABID  
GULAM HADJIRUL, SAURAGAL DAYAN, HADJA MONERA  
MANAGULA, HADJI L...**

*G.R. No. 134188. March 15, 1999*

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**GONZAGA-REYES, J:**

In this petition filed on 6 July 1998, Nur G. Jaafar assails the validity of Minute Resolution No. 98-1959 dated 29 June 1998 which ordered a manual counting of ballots in the province of Tawi-Tawi, cast during the 11 May 1998 elections and in the meantime, suspended the effects of the proclamation of the petitioner as the winner for the congressional seat of Tawi-Tawi, together with the other candidates who won in other provincial positions.

Briefly, the antecedents are:

Herein petitioner and the private respondent were rival candidates for the congressional seat in Tawi-Tawi during the May 11, 1998 elections. Pursuant to Comelec Resolution No. 2985 elections were held in the Autonomous Region in Muslim Mindanao (ARMM), including Tawi-Tawi, under the automated election system. After canvassing and counting of votes using the automated election system, the results showed that petitioner Nur Jaafar won over his rival, private respondent Ismael Abubakar, Jr. Said petitioner was proclaimed winner for the congressional seat in Tawi-Tawi and took his oath of office on June 4, 1998

On May 22, 1998, private respondent Abubakar, Jr., together with the candidates for the other provincial positions, filed with the COMELEC a petition docketed as SPA No. 98-349 to declare a failure of elections in the province of Tawi-Tawi on the alleged ground of "systems failure of the automated machines" and "massive and widespread election fraud and irregularity" with an alternative prayer for a manual recounting of ballots. It also appears that private respondent Abubakar, Jr. also filed with the House of Representatives Electoral Tribunal a protest contesting the election results in 288 precincts but the said protest was dismissed for failure to pay the required cash deposit per Resolution No. 98-295 of the House of Representatives Electoral Tribunal in HRET Case No. 98.003.

On June 29, 1998, the COMELEC, acting on the petition filed by respondent Abubakar, Jr. issued the questioned Minute Resolution no. 98-1959, which insofar as pertinent, provides:

"In the matter of the 1st Indorsement dated 27 June 1998 of Acting PES Idlana A. Mangona, coursed thru Comm. Manolo B. Gorospe, CIC, Regions IV, IX and ARMM, re: letter of petitioners Hadja Jubaida H. Matba and Ismael B. Abubakar, Jr., reiterating their petition submitted last May 22, 1998 and docketed as SPA No. 98-349 for immediate manual counting of ballots in the Province of Tawi-Tawi, as prayed for, and in the event of lack of material time, and so as not to render the petition academic, to grant, in the meantime, their motion for suspension of the effects of proclamation, and that SPA No. 98-349 be extended beyond June 30, 1998 as permitted under Section 16 of R.A. 7166.

x x x

"RESOLVED, consistent with the resolutions of the commission in Sulu and Maguindanao cases, to direct the immediate manual recounting of ballots in the province of Tawi-Tawi; and in the meantime, to suspend the effects of the proclamation as a logical consequence of the manual counting and that all pleadings filed relative to SPA No. 98-349 be made to survive even beyond the June 30, 1998 deadline."

In the instant petition for certiorari filed on July 6, 1998, petitioner argues that the COMELEC committed grave abuse of discretion and acted without jurisdiction when it suspended the effects of petitioner's proclamation and ordered a manual recount of the ballots in the province of Tawi-Tawi, without due notice and hearing in gross violation of the petitioner's right to due process. Petitioner claims that the questioned Comelec Resolution was issued even before he could file Answer to the petition filed by Abubakar, Jr, with the Comelec docketed as SPA No. 98-349. The petitioner maintains that a manual recount of votes is permissible and appropriate only in either an electoral protest proper or in a pre-proclamation controversy.

On July 7, 1998, the Commission issued Minute Resolution No. 98-2106 which directed all the ballot boxes in the province of Tawi-Tawi be brought immediately to Sangga-Sangga, Bongao, Tawi-Tawi at the Marine Headquarters for safekeeping and to be brought later to the designated place for recounting.

On July 14, 1998, this Court resolved to require the respondents to comment on the petition and "in the meantime the parties are hereby directed to maintain the status quo ante prevailing at the time of the filing of the petition."

The Office of the Solicitor General filed a Manifestation in Lieu of Comment, stating that the minute resolution in question is "fatally flawed", as the COMELEC has no power to partially or totally annul a proclamation or even suspend the effects of a proclamation without notice and hearing.

Private respondent filed comment, alleging that the widespread breakdown of the automated election system in Tawi-Tawi necessitated a recount, and that in issuing the questioned resolution, the COMELEC was merely exercising purely administrative functions, as distinguished from its quasi-judicial or adjudicatory functions.

On December 8, 1998, public respondent COMELEC filed its comment, stating that on July 14, 1998, the COMELEC at its regular En Banc meeting promulgated Minute Resolution No. 98-2145, the dispositive portion of which reads:

"RESOLVED, to hold in abeyance the implementation of Min. Resolution No. 98:1959 dated 29 June 1998 and Min. Resolution No. 98-2106 dated 07 July 1998, for further study/review by the Commission."

and on October 15, 1998, public respondent COMELEC promulgated Minute Resolution No. 98-2828, the dispositive portion of which is quoted hereunder:

"RESOLVED, to clarify that Sadikul Sahali and other proclaimed local candidates are the duly elected officials of Tawi-Tawi at the time referred to in the status quo ante order by the Supreme Court."

COMELEC also pointed out that the issuance of the assailed Minute Resolution No. 98-1959 was in accordance with law and jurisprudence; that the Comelec was not only performing its purely administrative functions, where no notice nor hearing is required, but it was also carrying out its "broad power" delineated by the Constitution to enforce and administer all law laws relative to the conduct of elections.

Public respondent COMELEC seeks the dismissal of the instant petition on the ground that the questioned Minute Resolution No. 98-1959 never became final and executory, and that M.R. No. 98-2145, above-cited, defined in unequivocal terms the stand of the COMELEC on the matter under controversy. Thus, this petition was premature and has been rendered moot and academic.

We agree with respondent COMELEC that this petition should be dismissed. The pleadings and their annexes

show that shortly after this petition for certiorari to annul Minute Resolution No. 98-1959 dated 29 June 1998, was filed the COMELEC motu proprio issued M.R. No. 98-2145 on July 14, 1998 which held in abeyance the implementation of the questioned resolution and that of Minute Resolution No. 98-2106 dated July 7, 1998 for further study/review by the Commission.[1] Hence, Resolution No. 98-1959 never became final and executory and is still subject to either recall or modification by the Commission.

The Court notes that COMELEC Resolution No. 98-2828 issued on October 15, 1998 clarified that all the winning candidates for local government positions have been proclaimed and that no declaration of failure of elections in the island province of Tawi-Tawi was made by the Commission. Sadikul Sahali (who was proclaimed governor of Tawi-Tawi) and all other local candidates who were proclaimed winners as of May 13, 1998 are the duly elected officials of Tawi-Tawi as of July 14, 1998, when the status quo ante order was issued by the Supreme Court. Accordingly, the subsequent promulgation of COMELEC Resolution Nos. 98-2145 and 98-2828 show that the questioned Minute Resolution no.98-1959 of the respondent tribunal suspending the effects of the proclamation of the petitioner and other local candidates has been effectively withdrawn, or at least held in abeyance for further study and review. The subsequent issuance of COMELEC M.R. Nos. 98-2145 and 98-2828 has mooted the instant petition.

The court should refrain from expressing its opinion in a case in which no practical relief may be granted in view of a supervening event.[2] It is a rule almost unanimously observed that courts of justice will take cognizance only of justiciable controversies wherein actual and not merely hypothetical issues are involved.[3] Where the issue has become moot and academic there is no justiciable controversy, an adjudication thereon would be of no practical use or value.[4]

IN VIEW OF THE FOREGOING, the petition is DISMISSED.

**SO ORDERED.**

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, and Buena, JJ., concur.

Quisumbing, J., on official leave.

Pardo, J., no part.

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[1]Annex 4, Comment of COMELEC.

[2]Bautista vs. Board of Energy, 169 SCRA 167; Benguet vs. Bureau of Labor Relations, 135 SCRA 225.

[3]Gancho-on vs. Secretary of Labor and Employment, 271 SCRA 201.

[4]Southeast Asia Manufacturing Corporation vs. The Municipal Court of Tagbilaran, 94 SCRA 341.

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